

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference A41196A	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/JP2004/011740	International filing date (day/month/year) 10.08.2004	Priority date (day/month/year) 11.08.2003
International Patent Classification (IPC) or national classification and IPC A61L27/00, C12N5/06		
Applicant HITACHI MEDICAL CORPORATION		

1.	This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2.	This REPORT consists of a total of <u>7</u> sheets, including this cover sheet.
3.	This report is also accompanied by ANNEXES, comprising: a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4.	This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input checked="" type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/JP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):
- ☒ the international application as originally filed/furnished
- ☐ the description:
- pages _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☐ the claims:
- nos. _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* _____ received by this Authority on _____
- nos.* _____ received by this Authority on _____
- ☐ the drawings:
- sheets _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 3-8

because:

☒ the said international application, or the said claims Nos. 3-8
relate to the following subject matter which does not require an international preliminary examination (*specify*):

"Animals" set forth in claims 3 to 8 are considered to include "humans" and hence, these claims are deemed to relate to methods for treatment of the human body by therapy.

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____
are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. _____ are so inadequately supported
by the description that no meaningful opinion could be formed.

☒ no international search report has been established for said claims Nos. 3-8

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	<u>2, 9</u>	YES
	Claims	<u>1</u>	NO
Inventive step (IS)	Claims		YES
	Claims	<u>1, 2, 9</u>	NO
Industrial applicability (IA)	Claims	<u>1, 2, 9</u>	YES
	Claims		NO
2. Citations and explanations (Rule 70.7)			
<u>Documents cited in the international search report</u>			
Document 1:	K. ISHIZEKI, Acta Anat. Nippon, 71(4), 294-307, August 1996		
Document 2:	Takashi INOUE et al., Japanese Association for Oral Biology Magazine, 37(5), 356-364, October 1995		
Document 3:	JP 10-052260 A		
Document 4:	JP 2002-502822 A		
<u>Claim 1</u>			
Claim 1 lacks novelty and does not involve an inventive step in the light of document 1.			
Document 1 discloses the formation of calcified nodes through the mixture and cultivation of enamel epithelial cells and dental pulp cells.			
<u>Claims 2 and 9</u>			
Claims 2 and 9 do not involve an inventive step in the light of document 1 and known prior art.			
The use of a carrier such as one comprising a biodegradable polymer when cultivating cells such as cells that differentiate into bone is known, as indicated in document 4, and it would be easy for a person skilled			

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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in the art to conceive of performing the cultivation in
the invention disclosed in document 1 in the presence of
such a carrier.

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Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
JP 2004-201612 A	22.07.2004	26.12.2002	
[E, A]			

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

The scope of "epithelial cells" and "mesenchymal cells" in claims 1, 2 and 9 includes various kinds of cells. However, it appears that only those cases in which "dental mesenchymal cells" are used as the "mesenchymal cells" are supported by the description within the meaning of PCT Article 6, taking into account the fact that in the embodiments "dental mesenchymal cells" are used as the "mesenchymal cells" without exception and, as disclosed in documents 2 and 3, cases where an osteoid tissue is not formed even when "epithelial cells" and "mesenchymal cells" are cultured in combination are already known.